

PredPol Predictive Policing SaaS Subscription Agreement

This PredPol Subscription Agreement (the "**Agreement**") is entered into by and between PredPol Inc., a California corporation, with offices at 331 Soquel Avenue, Suite 100, Santa Cruz, CA 95062 ("**PredPol**") and the entity agreeing to these terms, the City of Carlsbad ("**Customer**"). This Agreement is effective as of the date the Agreement is countersigned (the "**Effective Date**"). If you are accepting on behalf of your employer or another entity, you represent and warrant that: (i) you have full legal authority to bind your employer, or the applicable entity, to these terms and conditions; (ii) you have read and understand this Agreement; and (iii) you agree, on behalf of the party that you represent, to this Agreement. This Agreement governs Customer's access to and use of the Services.

1. Pricing.

Customer shall receive two years of the PredPol Services, a focused on prediction of property, assault and robbery, and such other crimes as Customer and PredPol agree upon. Pricing for each year shall be \$17,500 USD in year one, \$17,500 in year two, payable by November 1, 2013 and 2014 respectively. The one-time implementation fee of \$3,500 is waived. Services will commence subsequent to receipt of the Year One payment and Customer taking the necessary steps to enable PredPol to setup the Services.

Payments shall be made in U.S. Dollars by either wire transfer or check. Checks shall be sent to PredPol, Inc., 331 Soquel Avenue, Suite 100, Santa Cruz, California, 95062, USA. If wire transfer is desired, wiring instructions can be obtained by contacting your PredPol point of contact.

2. Term

2.1 Agreement Term.

This Agreement will remain in effect for the Term set forth above under Pricing.

2.2 Services Term and Purchases During Services Term.

PredPol will provide the Services to Customer during the Services Term. Unless the parties agree otherwise in writing, new products or services purchased during any Services Term will have a prorated term ending on the last day of that Services Term

3. Additional Customer Obligations.

Customer agrees to provide the information and take reasonable steps requested by PredPol in order to facilitate setup and implementation of the Services.

3.1 PredPol's License to Use Customer's Data.

Customer hereby provides PredPol with an irrevocable, non-exclusive license to use its statistical crime data for purposes of research, development and testing of PredPol's Services

during the term of this agreement. All statistical crime data provided to PredPol by Customer is provided "AS-IS" and without any express or implied warranty of any kind, including without limitation, merchantability or fitness of purpose. PredPol will not have access to personal information about offenders and victims. Customer also provides authority to PredPol to utilize its data for delivering services to Customer and other domestic, U.S.-based law enforcement agencies. Such services may include regional reporting, cross-jurisdiction predictions, among other services.

3.2 Additional Obligations.

- Generally support the beta testing of new features/tools developed by PredPol.
- Contribute to requested case studies, to be developed by PredPol.
- Respond to reasonable inquiries from other agencies regarding Customer's use of PredPol.
- On reasonable notice, host visitors from other agencies regarding PredPol.
- On reasonable notice and for a limited period of time, test new features as developed by PredPol.
- Provide user feedback, as reasonably requested by PredPol.

In the event any of the forgoing would involve costs to the Customer outside of their normal costs for employees performing their normal job duties, PredPol agrees to reimburse Customer for such costs, if PredPol requests Customer take such action. For example, if a Chief is requested to attend and speak at a conference of Police Chiefs to which they are not already traveling, PredPol agrees to reimburse Customer for all travel expenses, if requested.

4. Services.

4.1 License to Use.

Customer shall be licensed and authorized to use the Services as provided as a Software as a Service (SaaS). The scope of the license is non-transferable and non-exclusive and is authorized by PredPol for use by the Customer. The Customer shall have the right to use the Services for the Term of this Agreement and any extensions or renewals. The Services shall be provided in English.

4.2 Facilities and Data Transfer.

All facilities used to store and process Customer Data will adhere to reasonable security standards no less protective than the security standards at facilities where PredPol stores and processes its own information of a similar type and in compliant with all applicable state and federal laws. PredPol has implemented at least industry standard systems and procedures to ensure the security and confidentiality of Customer Data, protect against anticipated threats or

hazards to the security or integrity of Customer Data and protect against unauthorized access to or use of Customer Data.

4.3 Modifications To the Services.

PredPol may make commercially reasonable changes to the Services from time to time. If PredPol makes a material change to the Services PredPol will inform Customer.

4.4 Retention.

PredPol will have no obligation to retain any archived Customer Data. Customer Data is read from Customer, but PredPol does not provide or function as an archive service for the data.

5. Customer Obligations.

5.1 Compliance.

Customer will use the Services in accordance with this Agreement and all applicable California and federal laws. PredPol may make new applications features or functionality for the Services available from time to time the use of which may be contingent upon Customer's agreement to additional terms. In the event of a conflict between the terms of this Agreement and any additional terms in a subsequent features or functionality agreement, the terms of this Agreement shall take precedence over the additional terms in a subsequent features or functionality agreement.

5.2 Login IDs and Passwords.

Customer is solely responsible for monitoring and protecting the confidentiality of all Login IDs and Passwords issued to it and its End Users.

5.3 Customer Administration of the Services.

Customer may specify one or more Administrators who will have the rights to administer the End User Accounts. Customer is responsible for: (a) maintaining the confidentiality of the password and Admin Account(s); (b) designating those individuals who are authorized to access the Admin Account(s); and (c) ensuring that all activities that occur in connection with the Admin Account(s) comply with the Agreement. Customer agrees that PredPol's responsibilities do not extend to the internal management or administration of the Services for Customer and that PredPol is merely a data-processor.

5.4 Unauthorized Use.

Customer will use reasonable efforts to prevent unauthorized use of the Services and to terminate any unauthorized use. Customer will promptly notify PredPol of any unauthorized use of or access to the Services of which it becomes aware.

5.5 Restrictions on Use.

Unless PredPol specifically agrees in writing, Customer will not: (a) sell, resell, lease or the functional equivalent, the Services to a third party; (b) attempt to reverse engineer the Services or any component; (c) attempt to create a substitute or similar service through use of, or access to, the Services; (d) use the Services for High Risk Activities; or (e) use the Services to store or transfer any Customer Data that is controlled for export under Export Control Laws or other applicable law. Customer is solely responsible for ensuring that its use of the Services complies with all applicable California and federal laws and regulations.

5.6 Third Party Requests.

Customer is responsible for responding to Third Party Requests. PredPol will, to the extent allowed by law and by the terms of the Third Party Request: (a) promptly notify Customer of its receipt of a Third Party Request; (b) comply with Customer's reasonable requests regarding its efforts to oppose a Third Party Request; and (c) provide Customer with the information or tools required for Customer to respond to the Third Party Request. Customer will first seek to obtain the information required to respond to the Third Party Request on its own and will contact PredPol only if it cannot reasonably obtain such information.

6. Payment.

6.1 Payment.

Fees for orders where PredPol issues an invoice are due upon Customer's receipt of the invoice and are considered delinquent thirty days after the date of the applicable invoice.

6.2 Delinquent Payments.

Customer will be responsible for all reasonable expenses (including attorneys' fees) incurred by PredPol in collecting such delinquent amounts except where such delinquent amounts are due to PredPol's billing inaccuracies.

6.3 Taxes.

Customer is responsible for any Taxes and Customer will pay PredPol for the Services without any reduction for Taxes. If PredPol is obligated to collect or pay Taxes, the Taxes will be invoiced to Customer unless Customer provides PredPol with a valid tax exemption certificate authorized by the appropriate taxing authority. If Customer is required by law to withhold any Taxes from its payments to PredPol, Customer must provide PredPol with an official tax receipt or other appropriate documentation to support such payments.

7. Technical Support Services.

7.1 By PredPol.

If Customer cannot resolve a support issue then Customer may escalate the issue to PredPol who will provide the support necessary to resolve Customer's issue, to the extent reasonably practicable in PredPol's discretion.

8. Suspension.

8.1 Of End User Accounts by PredPol.

If PredPol becomes aware of a violation of this Agreement, then PredPol may suspend Customer's use of the Services. The duration of any suspension by PredPol will be until the Customer has cured the breach which caused the suspension.

8.2 5.2 Emergency Security Issues.

Notwithstanding the foregoing, if there is an Emergency Security Issue, then PredPol may automatically suspend the offending use. Suspension will be to the minimum extent and of the minimum duration required to prevent or terminate the Emergency Security Issue. If PredPol Suspends for any reason without prior notice to Customer, at Customer's request, PredPol will provide Customer the reason for the Suspension as soon as is reasonably possible.

9. Confidential Information.

9.1 Obligations.

Each party will: (a) protect the other party's Confidential Information with the same standard of care it uses to protect its own Confidential Information; and (b) not disclose the Confidential Information except to Affiliates, employees and agents who need to know it and who have agreed in writing to keep it confidential. Each party (and any Affiliates' employees and agents to whom it has disclosed Confidential Information) may use Confidential Information only to exercise rights and fulfill its obligations under this Agreement, while using reasonable care to protect it. Each party is responsible for any actions of its Affiliates' employees and agents in violation of this Section.

9.2 Exceptions.

Confidential Information does not include information that: (a) the recipient of the Confidential Information already knew; (b) becomes public through no fault of the recipient; (c) was independently developed by the recipient; or (d) was rightfully given to the recipient by another party.

9.3 Required Disclosure.

Each party may disclose the other party's Confidential Information when required by law but only after it, if legally permissible: (a) uses reasonable efforts to notify the other party; and (b) gives the other party the chance to challenge the disclosure.

10. Intellectual Property Rights; Brand Features.

10.1 Intellectual Property Rights.

Except as expressly set forth herein, this Agreement does not grant either party any rights, implied or otherwise, to the other's content or any of the other's intellectual property. As

between the parties, Customer owns all Intellectual Property Rights in Customer Data and PredPol owns all Intellectual Property Rights in the Services. Customer grants to PredPol a non-exclusive license to use Customer's Data for PredPol's legitimate business purposes, including providing products and services to law enforcement agencies.

11. Publicity.

Customer agrees that PredPol may include Customer's name in a list of PredPol customers, online or in promotional materials. Customer also agrees that PredPol may verbally reference Customer as a customer of the PredPol products or services that are the subject of this Agreement.

12. Representations, Warranties and Disclaimers.

12.1 Representations and Warranties.

Each party represents that it has full power and authority to enter into the Agreement. Each party warrants that it will comply with all California and federal laws and regulations applicable to its provision, or use of the Services, as applicable (including applicable security breach notification law). PredPol warrants that it will provide the Services as provided herein.

12.2 Disclaimers.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN, NEITHER PARTY MAKES ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NONINFRINGEMENT. PREDPOL MAKES NO REPRESENTATIONS ABOUT ANY CONTENT OR INFORMATION MADE ACCESSIBLE BY OR THROUGH THE SERVICES. CUSTOMER ACKNOWLEDGES THAT THE SERVICES ARE NOT A TELEPHONY SERVICE AND THAT THE SERVICES ARE NOT CAPABLE OF PLACING OR RECEIVING ANY CALLS INCLUDING EMERGENCY SERVICES CALLS OVER PUBLICLY SWITCHED TELEPHONE NETWORKS.

13. Termination.

13.1 Customer Termination

The Agency may terminate this Agreement with PredPol with 30 days' notice before the annual renewal for any reason. There will be no penalty for termination and Agency will be released from all obligations in Year 2.

13.2 Termination for Breach.

Either party may suspend performance or terminate this Agreement if: (i) the other party is in material breach of the Agreement and fails to cure that breach within thirty days after receipt of written notice; (ii) the other party ceases its business operations or becomes subject to

insolvency proceedings and the proceedings are not dismissed within ninety days; or (iii) the other party is in material breach of this Agreement more than two times notwithstanding any cure of such breaches.

13.3 Effects of Termination.

If this Agreement terminates, then: (i) the rights granted by one party to the other will cease immediately (except as set forth in this Section); and (ii) upon request each party will promptly use reasonable efforts to return or destroy all other Confidential Information of the other party.

14. Indemnification.

14.1 By Customer.

Customer will indemnify, defend, and hold harmless PredPol from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of a third party claim: (i) regarding Customer Data; or (ii) regarding Customer's use of the Services in violation of this Agreement or applicable California or federal law.

14.2 By PredPol.

PredPol will indemnify, defend, and hold harmless Customer from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of a third party claim that: (i) PredPol's technology used to provide the Services or any PredPol Brand Feature infringe or misappropriate any patent, copyright, trade secret or trademark of such third party; or (ii) the disclosure of confidential personal identifying information. Notwithstanding the foregoing, in no event shall PredPol have any obligations or liability under this Section arising from: (i) Customer's use of any Services or PredPol Brand Features in a modified form or in combination with materials not furnished by PredPol, and (ii) any content, information or data which is not confidential personal identifying information provided by Customer, End Users or other third parties.

14.3 Possible Infringement.

a. Repair, Replace, or Modify.

If PredPol reasonably believes the Services infringe a third party's Intellectual Property Rights, then PredPol will: (a) obtain the right for Customer, at PredPol's expense, to continue using the Services; (b) provide a non-infringing functionally equivalent replacement; or (c) modify the Services so that they no longer infringe.

b. Suspension or Termination.

If PredPol does not believe the foregoing options are commercially reasonable, then PredPol may suspend or terminate Customer's use of the impacted Services. If PredPol terminates the impacted Services, then PredPol will provide a pro-rata refund of the unearned Fees actually paid by Customer applicable to the period following termination of such Services.

14.4 General.

The party seeking indemnification will promptly notify the other party of the claim and cooperate with the other party in defending the claim. The indemnifying party has full control and authority over the defense, except that: (a) any settlement requiring the party seeking indemnification to admit liability or to pay any money will require that party's prior written consent, such consent not to be unreasonably withheld or delayed; and (b) the other party may join in the defense with its own counsel at its own expense. THE INDEMNITIES ABOVE ARE A PARTY'S ONLY REMEDY UNDER THIS AGREEMENT FOR VIOLATION BY THE OTHER PARTY OF A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.

15. Limitation of Liability.

15.1 Limitation on Indirect Liability.

NEITHER PARTY WILL BE LIABLE UNDER THIS AGREEMENT FOR LOST REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY.

15.2 Limitation on Amount of Liability.

NEITHER PARTY MAY BE HELD LIABLE UNDER THIS AGREEMENT FOR MORE THAN THE AMOUNT PAID BY CUSTOMER TO PREDPOL HEREUNDER DURING THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY.

15.3 Exceptions to Limitations.

These limitations of liability apply to the fullest extent permitted by applicable law but do not apply to breaches of confidentiality obligations, violations of a party's Intellectual Property Rights by the other party, or indemnification obligations.

16. Miscellaneous.

16.1 Notices.

Unless specified otherwise herein, (a) all notices must be in writing and addressed to the attention of the other party's legal department and primary point of contact and (b) notice will be deemed given: (i) when verified by written receipt if sent by personal courier, overnight courier, or when received if sent by mail without verification of receipt; or (ii) when verified by automated receipt or electronic logs if sent by facsimile or email.

16.2 Assignment.

Neither party may assign or transfer any part of this Agreement without the written consent of the other party, except to an Affiliate, but only if: (a) the assignee agrees in writing to be bound by the terms of this Agreement; and (b) the assigning party remains liable for

obligations incurred under the Agreement prior to the assignment. Any other attempt to transfer or assign is void.

16.3 Change of Control.

Upon a change of control (for example, through a stock purchase or sale, merger, or other form of corporate transaction): (a) the party experiencing the change of control will provide written notice to the other party within thirty days after the change of control; and (b) the other party may immediately terminate this Agreement any time between the change of control and thirty days after it receives the written notice in subsection (a).

16.4 Force Majeure.

Neither party will be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action, and Internet disturbance) that was beyond the party's reasonable control.

16.5 No Waiver.

Failure to enforce any provision of this Agreement will not constitute a waiver.

16.6 Severability.

If any provision of this Agreement is found unenforceable, the balance of the Agreement will remain in full force and effect.

16.7 No Agency.

The parties are independent contractors, and this Agreement does not create an agency, partnership or joint venture.

16.8 No Third-Party Beneficiaries.

There are no third-party beneficiaries to this Agreement.

16.9 Equitable Relief.

Nothing in this Agreement will limit either party's ability to seek equitable relief.

16.10 Governing Law.

This Agreement is governed by California law, excluding that state's choice of law rules. FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE PARTIES CONSENT TO PERSONAL JURISDICTION IN, AND THE EXCLUSIVE VENUE OF, THE COURTS IN SANTA CRUZ COUNTY, CALIFORNIA. The parties explicitly agree that no other laws, treaties or regulations shall control this Agreement.

16.11 Amendments.

Any amendment must be in writing and expressly state that it is amending this Agreement.

16.12 Survival.

The following sections will survive expiration or termination of this Agreement: Section 3, 6, 7.1, 10, 12, 13, 14 and 15.

16.13 Entire Agreement.

This Agreement, and all documents referenced herein, is the parties' entire agreement relating to its subject and supersedes any prior or contemporaneous agreements on that subject.

16.14 Interpretation of Conflicting Terms.

If there is a conflict between the documents that make up this Agreement, the documents will control in the following order: the Subscription Terms set forth in any separate quote prepared by PredPol, then the Agreement, and the terms located at any URL. If Customer signs a physical agreement with PredPol to receive the Services, the physical agreement will override any online Agreement.

16.15 Counterparts.

The parties may enter into this Agreement in counterparts, including facsimile, PDF or other electronic copies, which taken together will constitute one instrument.

17. Definitions.

17.1 "Account Manager" means the PredPol business person working with Customer regarding Customer's purchase of the Services.

17.2 "Admin Account(s)" means the administrative account(s) provided to Customer by PredPol for the purpose of administering the Services. The use of the Admin Account(s) requires a password, which PredPol will provide to Customer.

17.3 "Administrators" mean the Customer-designated technical personnel who administer the Services to End Users on Customer's behalf.

17.4 "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with a party.

17.5 "Brand Features" means the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each party, respectively, as secured by such party from time to time.

17.6 "Confidential Information" means information disclosed by a party to the other party under this Agreement that is marked as confidential or would normally be considered confidential under the circumstances. Customer Data is Customer's Confidential Information.

17.7 "Customer Data" means data, including crime data, provided, generated, transmitted or displayed via the Services by Customer or End Users.

17.8 "Emergency Security Issue" means either: (a) Customer's use of the Services in violation of the Acceptable Use Policy, which could disrupt: (i) the Services; (ii) other customer's use of the Services; or (iii) the PredPol network or servers used to provide the Services; or (b) unauthorized third party access to the Services.

17.9 "End Users" means the individuals Customer permits to use the Services.

17.10 "End User Account" means a PredPol-hosted account established by Customer through the Services for an End User.

17.11 "Export Control Laws" means all applicable export and reexport control laws and regulations, including the Export Administration Regulations ("EAR") maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control, and the International Traffic in Arms Regulations ("ITAR") maintained by the Department of State.

17.12 "Fees" means the amounts invoiced to Customer by PredPol for the Services as described in a Subscription Terms or similar document.

17.13 "High Risk Activities" means uses such as the operation of nuclear facilities, air traffic control, or life support systems, where the use or failure of the Services could lead to death, personal injury, or environmental damage.

17.14 "Initial Services Term" means the term for the applicable Services beginning on the Service Commencement Date and continuing for 12 months (or, if different, the duration set forth on the Order Page).

17.15 "Intellectual Property Rights" means current and future worldwide rights under patent law, copyright law, trade secret law, trademark law, moral rights law, and other similar rights.

17.16 "Subscription Terms" means the order document reflecting the financial terms of the subscription, including: (i) the Services being ordered; (ii) Fees; and (iii) Initial Services Term.

17.17 "Service Commencement Date" is the date upon which PredPol makes the Services available to Customer, and will be within one week of PredPol's receipt of the completed Order Page, unless otherwise agreed by the parties.

17.18 "Service Pages" mean the web pages displaying the Services to End Users.

17.19 "Services" means the applicable PredPol product or service, as described in the attached Product Data Sheet.

17.20 "Services Term" means the applicable Initial Services Term and all renewal terms for the applicable Services.

17.21 "Suspend" means the immediate disabling of access to the Services, or components of the Services, as applicable, to prevent further use of the Services.


17.22 "Taxes" means any duties, customs fees, or taxes (other than PredPol's income tax) associated with the sale of the Services, including any related penalties or interest.

17.23 "Term" means the term of the Agreement, which will begin on the Effective Date and continue until the earlier of (i) the end of the last Services Term or (ii) the Agreement is terminated as set forth herein.

17.24 "Third Party Request" means a request from a third party for records relating to an End User's use of the Services. Third Party Requests can be a lawful search warrant, court order, subpoena, other valid legal order, or written consent from the End User permitting the disclosure.

EXECUTED as a sealed instrument as of the day and year first set forth below by the last counter-signatory.

DATED: 10/10, 2013 PredPol, Inc.:



for
By: Caleb Baskin, its CEO

DATED: October 30, 2013 City of Carlsbad:



By: October 30, 2013,

Approved as to Form:

CELIA A. BREWER, City Attorney

By: 

Assistant City Attorney

